

## ECOBANK v. KAJANGWE

[Rwanda SUPREME COURT – RCOMA 0152/11/CS (Kayitesi, P.J., Mukandamage and Kanyange, J.) January 10, 2014]

*Commercial Law – Payment of loans given by bank – Computation of principal loan and interests for loans given in different period and consolidated afterward – Production of evidence in commercial cases – The burden to prove – Every plaintiff must prove a claim, failure of which the defendant wins the case – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9.*

*Commercial procedure – Counterclaim – The claim which was not admissible in first instance cannot be considered as filed for the first time at appeal level – A counterclaim cannot be admissible if it is filed after preliminary hearing – Law n° 45/2007 of 11/09/2007 modifying and completing the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 351.nonies.*

**Facts:** Ecobank filed a case against Kajangwe before the Commercial High Court requesting him to pay the loan of 78,500,000 Rwf which amounted to the loan of 136,898,167 Rwf as a result of loan consolidation as alleged by ECOBANK, principal loan and interests all inclusive . Thereafter, ECOBANK notified him that he owes it the debt of 234,442,167 Rwf. Kajangwe explained that he had already paid the debt of 150,000,000 Rwf which was acquired from the selling of the Hotel Burundi Palace and requested to be exonerated of 88,000,000 Rwf; thus it remains to pay the interests and he does not understand how ECOBANK can sue him again for payment of the principal debt and its interests. ECOBANK, as a professional, did not manage to demonstrate how it it computed and merged the loans Kajangwe so as to establish their source, quantum and how merged loans should be paid.

During the hearing, Kajangwe filed a counterclaim requesting the damages related to the loss incurred resulting from the payment of unnecessary debt, moral damages, compensation and those related the denial of the credit which all amount to 2,000,000,000 Rwf. The Commercial High Court ruled that there was the contract of consolidation of loans between ECOBANK and Kajangwe and there were some letters that the bank wrote to Kajangwe that he had already paid the principle debt but remaining with the interests. It concluded that ECOBANK did not manage to produce evidence for the debt it alleges. Concerning the counterclaim filed by Kajangwe, the Court ruled that it cannot be admissible stating that it was filed too late after the preliminary hearing.

ECOBANK appealed to the Supreme Court stating that the Commercial High Court ruled that its loss of the case was caused by lack of evidence of the real debt despite the production of instrumentum (contract) signed by both parties. Kajangwe insists again that ECOBANK does not know the exact debt as it was demonstrated by the contradiction in computation of the money he owes it. Kajangwe in return filed a cross appeal stating that the Commercial High Court rejected his counterclaim for damages upon unsubstantiated reasons. He requested the Supreme Court to hear the case. On this issue, ECOBANK states that it is a new claim filed at appeal level and therefore cannot be admissible because damages he requests were not discussed in first instance.

**Held:** 1. Every plaintiff must prove a claim, failure of which the defendant wins the case. Although ECOBANK relies on the contract dated 5<sup>th</sup> July, 2005 related to the consolidation of the debts, it does not show exactly the consolidated debts and the quantum of each one so as to get the principal debt the appellant alleges and its way of repayment. Rather, the stipulations of the contract implies that it construed for a new loan that the defendant would receive after delivering the required feasibility study and the required securities; therefore the instrumentum (contract) cannot be considered as evidence of the debt arising from the consolidation of the two debts the appellant states that they were consolidated.

2. The counterclaim which was not admissible in first instance cannot be considered as filed for the first time at appeal level. It must be admissible and examined. The counterclaim filed after the preliminary hearing cannot be admissible, therefore, the cross appeal filed by Kajangwe has no merit since the Commercial High Court committed no mistake in deciding that inadmissible.

**Appeal without merit.  
Cross appeal without merit.  
Court fees to the appellant.**

**Statutes and statutory instruments referred to:**

Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9.

Law n° 45/2007 of 11/09/2007 modifying and completing the Law n°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 351 nonies.

**No case referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] ECOBANK filed a case against Kajangwe Callixte in the Commercial High Court requesting him to pay 136,898,167 Rwf of the principal loan and its interests in accordance with their debt consolidation contract they concluded on 5<sup>th</sup> July, 2005 in which both parties agreed the debt would be paid in 96 months on interest rate of 15%. But Kajangwe himself stated that it was not a contract for debt consolidation but rather a project of the contract to buy an international transportation motor vehicle and that the credit was never granted because there was a lack of securities

[2] The Court held that there was a contract between ECOBANK and Kajangwe but it did not relate to the new loan; rather the debt therein amounting to 136,698,167 Rwf pertained to the totality of different debts that Kajangwe owed the bank so as to get a reimbursement schedule and pay the loan on a unique account as he had requested it.

[3] On the issue of whether Kajangwe paid that loan, the Court found that there were letters written to him by the bank which show that he paid the principal loan remaining to pay the interest. Thus, it is not understandable how ECOBANK sued for the principal loan and its interest. The Court held that Ecobank did not produce evidence of the debts it alleges. The

Court did not also admit the counterclaim filed by Kajangwe for damages because of its delay in its filing after the preliminary hearing.

[4] ECOBANK appealed to the Supreme Court, stating that the Court held that it has lost the case due to lack of evidence justifying the debt, while it produced the instrumentum (contract) signed by both parties and which is binding between the contracting parties. It requests that Kajangwe pay 136.898.167 Rwf that he accepted he was indebted to the bank, since the bank exonerated the interests for as he was ranked to the 5<sup>th</sup> level by The National Bank of Rwanda for failure to pay.

[5] In cross appeal, Kajangwe stated that the Commercial High Court rejected his counterclaim for damages on groundless motives. He requests the Court to admit and examine his counterclaim for ECOBANK to pay him damages equal to 2,000,000,000 Rwf to compensate him for the loss incurred as a result of selling his hotel "Burundi Palace", the loss resulting from not being granted a loan to buy 2 buses as it was provided in the project, the loss incurred because of paying undue debt since his debt was merged with that of company CBS, moral damages, procedural and advocates fees.

[6] The hearing was held in public on 23<sup>th</sup> July, 2013 and 17<sup>th</sup> December, 2013 ECOBANK was represented by Kayitare Serge, the Counsel while Kajangwe Callixte was assisted by Shumbusho Philbert, Niyondora Nsengiyumva and Musore Gakunzi Valery, the Counsel

## **II. ANALYSIS OF LEGAL ISSUES**

### **A. Whether or not the Court disregarded evidence that Kajangwe owed a debt to ECOBANK.**

[7] Kayitare, the Counsel for ECOBANK, states that the Court ruled that it lost the case because it did not produce the concrete evidence of the debt that Kajangwe owed it while in filing the claim, ECOBANK requested to be paid 136.898.167 Rwf including the interests. This money is evidenced by the loan contract signed by both parties on 5<sup>th</sup> July 2005 as it was submitted to the Court. Therefore, since the contract was made in accordance with the law, it should be considered.

[8] Kayitare, the Counsel, explained that Kajangwe requested for a loan amounting to 78,500,000 Rwf on 24<sup>th</sup> January 1997 to enable him to pay the loan he owed to Banque Commerciale du Burundi and "Société Burundaise de Financement. The loan was granted and on 9<sup>th</sup> October, 1997, Kajangwe made an agreement with BCDI to merge the debts that his company, CBS (Compagnie de Bon Service), owed BCDI, and he was the one to pay it himself through his initial account in that bank, which was granted as proven in the notice of transfer of commitment CBS "notification de reprise des engagements CBS" dated 10<sup>th</sup> October, 1997 where he read and approved (lu et approuvé) that the merged debts were equivalent to 94,672,680 Rwf.

[9] Kayitare states again that in a note dated 6<sup>th</sup> July, 2001 addressed to the Managing Director of BCDI, the bank records revealed that Kajangwe had a principal debt for the bank equivalent to 234,442,167 Rwf and interests equivalent to 88,638,580 Rwf calculated from 17<sup>th</sup> June, 1999 to that day.

[10] Kayitare, the counsel continues explaining that on 6<sup>th</sup> August, 2001 Kajangwe wrote to BCDI consenting to sell the Hôtel Burundi Palace which he owned in Burundi in order to reduce that credit. He further states that Kajangwe did not deny its quantum in that letter (the debt) while he had been notified as he acknowledged that in its first paragraph; he rather thanked the bank for having accepted to exonerate him of the interests amounting to 88,000,000 Rwf.

[11] After selling the Hôtel on 30<sup>th</sup> July 2003 Kajangwe made another transaction with BCDI (acte transactionnel). Both parties agreed that Kajangwe remained with the debt equal to 91,318,226 Rwf to be paid in 10 years on an interest rate of 15%, he would pay 1,473,281 Rwf per month, and that the contract replaced various other notifications and other transactions previously made.

[12] Kayitare, the Counsel states that Kajangwe again requested for the temporary overdraft “découvert” equal to 20,000,000 Rwf on 21<sup>st</sup> July, 2003 and received it on 14<sup>th</sup> August, 2003 as demonstrated by the temporary overdraft contract equal to 20,000,000 Rwf “contrat d’octroi du découvert temporaire de 20,000,000 Rwf” which he received and approved.

[13] On 24<sup>th</sup> June 2005, Kajangwe wrote again to BCDI submitting the payment plan of the loan and requesting to consolidate the above mentioned debt so that he could pay the debt in 8 years. Among the securities provided by Kajangwe, there is included about 3,655 shares he owned in BCDI. BCDI accepted his request in the letter it wrote to him dated on 29<sup>th</sup> June, 2005 notifying him that after consolidating the debts, the principal debt was up to 136,898,167 Rwf. Kajangwe did not deny the debt but rather approved the contract and the included reimbursement plan on 5<sup>th</sup> July 2005. Additionally, on that date, Kajangwe gave the attorney of BCDI, the power to sell his shares so that his debt equal to 136,898,167 Rwf could be paid.

[14] Kayitare, the Counsel, states that it is not understandable how Kajangwe can deny those consolidated loans upon his request and he is unable to provide a reason which led him to sign the contract without indicating to the bank that the debt was not real.

[15] He contends that ECOBANK once mistakenly notified him that he owes a debt equal to 594,317,302 Rwf, it noted that it had committed an error and it rectified it, and apologized, telling him that it was an error and that the real debt was 153,483,397 Rwf. However, ECOBANK found that Kajangwe was in class five and thus it cannot continue computing interests for him pursuant to the judgment of the Commercial High Court which ruled that if a person is in such a class and that the aggrieved party delayed to file a claim against him, he cannot be requested to pay interests.

[16] In his defense, Kajangwe states that he started cooperating with BCDI on 22<sup>nd</sup> January, 1997, it granted him a loan equal to 78,500,000 Rwf and he provided guarantees which were already in the possession of Banque Commerciale du Burundi, because BCDI had already paid his debt he owed to that bank. Astonishingly, BCDI erroneously registered the securities to secure the loan equal to 185,000,000 Rwf.

[17] Concerning the fact that he agreed to pay the debts he had for CBS company, Kajangwe states that it was not true because it would only be possible if all parties agreed on that; that’s to say the transferee bank, CBS that got the loan and Kajangwe who agreed to pay. He finds that allegations of the representative of the bank are of no value as far as the

law is concerned. He also denies the negotiations alleged that he held with the bank before signing the document consenting to pay for CBS those debts equal to 94,672,680 Rwf. In addition, ECOBANK did not demonstrate that CBS defaulted in payment that it bases on that to request Kajangwe to pay on its behalf.

[18] Kajangwe states that it is not comprehensible how he would accept to pay the debts of CBS on 10<sup>th</sup> October, 1997 while he had also failed to pay the debt that ECOBANK noticed him about, because on 30<sup>th</sup> July, 1997 it informed him that he owed it 8,599,805 Rwf, on 23<sup>rd</sup> September 1997 it informed him that he owed it 185,249,177 Rwf and the arrears of 11,052,101 Rwf of which he does not know their origin.

[19] He finds ECOBANK, acted fraudulently by adding 94,672,680 Rwf + 78,500,000 Rwf + 11,052,101 Rwf = 184,224,781 “rounded to 185,000,000 Rwf”. He thinks ECOBANK did so in order to retain his guarantees for more than 78,500,000 Rwf of loan he was granted.

[20] Kajangwe further states that ECOBANK seriously contradicted itself because at various intervals it notified him of the debt, the principal debt or interests or both at once as follows:

- 5<sup>th</sup> July 2005 ECOBANK claimed that it sued for 136,898,167 Rwf
- On 18<sup>th</sup> January 2007 ECOBANK declared the debt of 594,317,302 Rwf, principal debt and interests inclusive
- On 26<sup>th</sup> January 2007, in its apology, ECOBANK stated the debt was 153,483,397 Rwf for interests only. But on the annex of the letter, it is indicated that the debt of CBS was 165,000,000 Rwf, which does not concern Kajangwe, but consolidated with his debt of 78,500,000 Rwf, all together amounting to 243,500,000 Rwf which Kajangwe had already paid with the interests of 45.9 million. From this perspective, what is not indicated on his account n° 01093-01-92, is how he was given the loan of 243,500,000 Rwf considered to have been paid and the source of 153,483,397 Rwf, the balance that the bank is claiming from him.
- On 27<sup>th</sup> April, 2014 ECOBANK stated that he owes it 192, 017,960 Rwf composed of the debt and their interests.
- On 15<sup>th</sup> September, 2010, ECOBANK stated that the debt was 425,923,843 Rwf including the principal debt and interests for which it did not provide a source.

[21] Regarding the letter written to the Managing Director of BCDI, on 7<sup>th</sup> June, 2001 upon which ECOBANK bases its payment request for 234,44,2,167 Rwf and interests of 88,683,580 Rwf calculated from 17<sup>th</sup> June, 1999 to 6<sup>th</sup> July, 2001, Kajangwe contends that he does not recognize it because it was internal correspondence of the bank. Rather, he claims that he was verbally notified that the total debt as from 31<sup>st</sup> December, 2001 was 233,379,354 Rwf according to his account historical statement even though the latter does not meet the reality. This debt notification motivated him to sell Hôtel Burundi Palace.

[22] Concerning the notification of the 234,442,167 Rwf as debt which Kajangwe did not disapprove, the latter states that ECOBANK does not want to reveal the truth to the Court because it was the bank which manifested a worry of his payment by giving him a deadline of 30 to finish the payment. The notification informed Kajangwe that ECOBANK had got a buyer named BARCO TRADING SA for Hotel Burundi Palace at 150,000,000 Rwf. In replying to the letter written by Ecobank, Kajangwe states that he accepted to sell the Hotel Burundi Palace at that price even if its valuation was 299,361,000 Rwf so that he could be

exempted from 88,000,000 Rwf but it was not done. He finds that ECOBANK could claim nothing from him since 30<sup>th</sup> April, 2012 but instead, it should pay him 4,620,646 Rwf.

[23] Concerning the contract dated 5<sup>th</sup> May, 2005, ECOBANK states that it is evidence was disregarded by the Commercial High Court. Kajangwe states that it does not concern the consolidated debts but rather the contract concerned the project of loan to buy two buses for transporting passengers on the Kigali-Kampala international road. He requested the loan amounting to 143,000,000 Rwf which is in financial feasibility study “étude de faisabilité financière” as given to ECOBANK to be paid within 8 years with a 15% interest rate per year. He says that the bank demanded him to pay his contribution while he had no money so he requested the bank to pay the whole totality. The bank made a contract with Kajangwe to sell his 4,000 shares in the bank amounting to 150,000,000 Rwf. ECOBANK retained 80,000,000 Rwf of his shares and gave him 70,000,000 Rwf in return to allow him to get insurance and pay taxes for the buses so the project could be implemented.

[24] He stated again that ECOBANK did not execute the contract because he failed to get a buyer for 4,000 shares; instead it only bought 1,334 shares for 53,360,000 Rwf and ECOBANK consented to grant Kajangwe 50,000,000 Rwf as an overdraft “crédit de caisse”, and leave him the responsibility for the rest. At the end, he states that ECOBANK made him write a letter on 24<sup>th</sup> June, 2005 ordering what he must give to it as security and so must accept an overdraft which is considered the secure loan he had before in order to prevent the National Bank of Rwanda from discovering and punishing ECOBANK because it granted another loan while he was ranked in class 5 because of default of payment.

[25] Kajangwe states again that ECOBANK replied to his request on 29<sup>th</sup> June, 2005 with the specificity that it had finished computing the loans which came to the amount of 136,898,167 Rwf even though it does not explain the loans or how they were computed. Another reliable evidence of a new loan is that the bank’s letter states that the loan contract becomes effective after the payment of arrears of months 3, 4, 5 and 6/2005 worth 5,893,124 Rwf before execution of the transaction. Therefore, it indicates that it was not merging the former loans. Kajangwe does not understand the reason why ECOBANK began with the arrears of March when beginning the project of the Buses and he does not understand why they gave him a grace period of 2 months, if there were consolidation of the former loans.

[26] He added that another proof that the contract was a new loan that intended to facilitate Kajangwe implement his project to buy two buses for the transportation of passengers, which should have been one of the mortgages, is indicated by the following:

- ECOBANK cannot prove the consolidated loan worth 136,898,167 Rwf or that the contract does not provide it.
- The contract itself is a loan contract whose execution will start on 30<sup>th</sup> July, 2005. The second article of the contract provides that the interest shall be calculated one month after the money will have been deposited on Kajangwe’s bank account.
- Article 4 of the contract provides that the bank must record in its books the date on which the money have been deposited (décaissement ou débloqué de fonds). Article 8 provides that in case the loan is granted, Kajangwe will pledge collateral stated in that article.

[27] Therefore, Kajangwe finds that ECOBANK cannot compel him to pay the loan that it did not grant because it terminated the contract on 16<sup>th</sup> December, 2005 and the loan became

153,483,397 Rwf which makes him to wonder the reason why it is not the subject of the litigation against him, but rather 136,898,167 Rwf.

## **THE VIEW OF THE COURT**

[28] Article 9 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure provides that every plaintiff must prove a claim failure of which the defendant wins the case.

[29] The analysis of the contract dated on 5<sup>th</sup> July, 2005 entered into between ECOBANK and Kajangwe demonstrates that it was a debt equivalent to 136,868,167 Rwf granted as secure loan to be paid in 96 months with interests' rate of 15% effective from 30<sup>th</sup> July, 2005 (articles 1 and 2). In the contract, it is stated that its purpose is the consolidation of debts that the interests shall be calculated from the day the amount is released, Kajangwe would get the payment schedule, which is also a part of the contract as well (article 3), that the collateral includes, the pledge of the bus, power of attorney sale of the buses and the power of attorney of the sale of remaining shares after the sale of 1334 shares. The documents Kajangwe must submit to the bank include the feasibility study of the buses exploitation project. "étude de faisabilité du projet d'exploitation des bus".

[30] The Court finds that even if the purpose of this contract was consolidation of debts, it does not clearly indicate the amount of the consolidated debts that Kajangwe has and their quantum in order to obtain the principal debt totaling 136,868,167 Rwf or its mode of its payment while accepted that he had the debt totalling 91,318,226 Rwf which was under payment, ECOBANK does not even show the payment schedule it drafted for him as cited in the contract. Additionally, there is no evidence proving that ECOBANK delivered the provisions of the repayment plan to Kajangwe.

[31] Rather, the Court finds that the provisions of the contract imply a new loan that would have been granted to Kajangwe for the the project of purchase of 2 buses after the delivery of the feasibility study and colateralsecurity required including those 2 buses. Thus, the contract should not be considered as an evidence of the debts originating from the consolidation of the two loans ECOBANK alleges to have been consolidated.

[32] Regarding the statements made by ECOBANK that it is Kajangwe who requested the consolidation of his debts, which was done, notified to him and accepted it, but which he denies now, the Court finds that ECOBANK, as a professional, should have provided the court, as it requested but in vain, with the information on how it computed the consolidated debts of Kajangwe before the conclusion of the contract in order to figure out the source and the quantum of the consolidated debts and how it would be repaid.

[33] In addition, it is clear that after the signing of that contract, ECOBANK kept on notifying Kajangwe of the debt in various ways until 1<sup>st</sup> January, 2007 when it wrote to him the letter RMU/GUD/002/01-07 notifying him that after computing and verifying his debt, it amounted to 153.483.397 Rwf as it is annexed to the letter. The letter apologized that some errors occurred in the prior computations and notified him that he had to clear his debt not later than 30<sup>th</sup> January, 2007.

[34] After the consideration of the annex to the letter, the bank confirmed that Kajangwe already paid 243,500,000 Rwf of the principal debt and their interests amounting to

45,900,000 Rwf with the balance of 153,483,397 Rwf composed of 100% and interests. Furthermore, on 27<sup>th</sup> April, 2007, he was informed that the debt was 192,017,960 Rwf and on 15<sup>th</sup> September, 2010 he was requested to pay 425,923,843 Rwf. It is not clear how the case was filed against him for the principal debt of 136,868,167 Rwf while the bank itself agreed that the rest he was required to pay was only the interest.

[35] The Court finds, as decided by the Commercial High Court, that ECOBANK does not produce evidence for its claim of the consolidated debts. Thus, appeal of Kajangwe has no merit.

**B. Whether counterclaim filed by Kajangwe in Commercial High Court had to be admissible and whether cross appeal he filed [in this Court] can be admitted.**

[36] Kayitare, the Counsel for ECOBANK, states that Kajangwe's cross appeal should not be admitted or examined because it is a new claim filed on appellate level. Since his request for damages was not debated in the first instance, it has no link with the case filed by ECOBANK requesting payment of the debt originating from the contract dated July 5, 2005. Further the cross appeal has nothing to do with the fact that, prior to the conclusion of the first contract; Kajangwe had requested the loan which was not granted. Furthermore, it was submitted contrary to articles 167 and 168 of the Law relating to the civil, commercial, labour and administrative procedure. He finds that if Kajangwe intends to be awarded damages, he should file a separate claim.

[37] Kajangwe and his Counsels state that his counterclaim before the Commercial High Court was rejected upon unsubstantiated reasons and therefore is not a new claim.

[38] Regarding the link between this claim and the claim filed by ECOBANK against Kajangwe, they state that its purpose is to prove that the debt he is sued for, of which they claim that it remained after the sale of his Hotel was fraud against Kajangwe since he was compelled to pay a debt exceeding the one he was given. Kajangwe's counsel requests damages worth 2,000,000,000 Rwf including Compensatory and procedural costs as well as advocate fees as follows:

- Compensation amounting to 949,922,632 Rwfs for losses resulting from the sale of Hôtel Burundi Palace;
- Damages of 508,278,816 Rwf for losses resulting from ECOBANK's refusal to grant the loan for the project of purchase of 2 buses as provided in the submitted project including 143,464,457 Rwf for the loan he would have been granted.
- 88,136,699 Rwf of the deposit paid plus interests of 15%;
- 157,319,287 Rwf for the losses resulting from undue payment of the debt amounting to 91,318,226Rwf.
- Moral damages for his family amounting to 420,000,000 Rwf because ECOBANK put him in quarantine as someone who cannot work with all banks in Rwanda (class 5) from 1998 which paralyzed all their activities (him and his family), and it ridiculed him before the President of Republic and his fellow investors that he had the debt for it [bank] totaling 594,317,302 Rwf which causes him humiliation and discredit.
- 20,000,000 Rwf for advocate fees.



## **THE VIEW OF THE COURT**

[39] In regards to whether Kajangwe's counterclaim is newly filed for the first time before the appellate level, the Court finds it unsubstantiated because the previous Court examined it and found it inadmissible because it was filed too late. Therefore, the cross appeal he filed must be admitted and examined.

[40] Concerning the filing of the counterclaim, article 351 *nonies* paragraph 1 of the Law n° 45/2007 of 11/09/2007 modifying and complementing Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, provides that a counterclaim and claim proceedings against a guarantor shall be instituted in writing before the conclusion of the preliminary hearing.

[41] In consideration of whether the previous Court should have admitted the counterclaim filed by Kajangwe, the documents in case file show the preliminary hearing before the Commercial High Court started on 14<sup>th</sup> April, 2010, the parties were present, but no submissions were made by Kajangwe, the respondent. The hearing was postponed on 23<sup>rd</sup> June, 2010. Muhozi Paulin, Kajangwe's Counsel, requested the date of the hearing and would have handed over the submissions in response to ECOBANK's ones. The preliminary hearing was closed and it was decided that the case will be heard on 9<sup>th</sup> January, 2010.

[42] It is clear that from the submissions received in the course of the hearing conducted on 9<sup>th</sup> September, 2011, that is when the counterclaim filed by Kajangwe was noticed for the first time. Thus, its dismissal has merit since it was filed contrary to article stated above.

[43] Basing on the previous explanations, the Court finds that, apart from the motivation ground of motivation which differ from those of the appealed case there is no change on the verdict delivered by the Commercial High Court.

## **III. THE DECISION OF THE COURT**

[44] Decides that the appeal filed by ECOBANK is without merit.

[45] Decides to admit the cross appeal of Kajangwe.

[46] Decides that the cross appeal is without merit.

[47] Orders ECOBANK to pay 40.800 Rwf for Court fees in 8 days. In case of default, that amount will be drawn from its properties by the government coercion